

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

The meeting was called to order by Chairperson Ben Vidricksen at 9:00 a.m. on January 31, 1994 in Room 254-E of the Capitol.

All members were present except:

Committee staff present: Hank Avila, Legislative Research Department
Ben Barrett, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Martha Ozias, Committee Secretary

Conferees appearing before the committee:

Michael Byington - Kansas Association for the Blind and Visually Impaired, Inc.
Dale F. Kuhn - President, Nutri-Shield, Inc.
Rob Hodges - President of Kansas Telecommunications Association
Lincoln E. Brown - Area Manager, Rates for Southwestern Bell Telephone
Mike Smith - Attorney for Southwestern Bell Telephone

Others attending: See attached list

HB 2445 - Permitting a left turn on a red light from a one-way street onto a one-way street, unless a sign is posted prohibiting such a turn.

Due to an over-sight, the Chairman agreed to allow time for Michael Byington to express his views on this bill on behalf of the visually and hearing impaired.

Mr. Byington addressed the Committee not only as a volunteer lobbyist but also from the viewpoint of someone who is employed to teach independent living skills, including orientation and mobility, to individuals who are multiply disabled blind. He pointed out that these people are trained to cross busy streets by listening to the flow of traffic. The bill that allowed right turns on red made this more difficult for them as they often were not able to cross the street in order to catch a bus when traffic was turning and also, in high density areas, many drivers were pulling into the crosswalks to check for on-coming traffic, thus blocking the way for the visually impaired. Mr. Byington urged the Committee to kill the bill and if not to amend it by striking line eight, page two starting with the word "except" through the end of (3) at line 27, page two. (Attachment 1)

The Chairman said he would request that the Majority Leader hold the bill and put it further down on the Senate Calendar and the Committee will discuss it at a later date.

SB 440 - Liability of public utilities for certain errors or omissions.

Dale Kuhn addressed the Committee explaining that Southwestern Bell had mistakenly changed their business telephone from a listed number to an unlisted number resulting in the lack of a phone number accompanying a business article in a magazine. This error had a devastating effect on their business. The company notified Southwestern Bell of their potential loss and thought that SWBT should be held responsible for their mistakes. He learned that Southwestern Bell was protected by state tariffs and could not be held responsible for their errors unless wanton and willful intent could be proven. Mr. Kuhn is seeking ways to change the system and this bill would change the tariffs, making SWBT responsible for their mistakes and give the consumer a chance in the courts. Mr. Kuhn also suggested that the bill be amended to make the KCC responsible for settling claims of this nature so that SWBT would not have the power to delay action on a suit for years thereby costing many dollars in legal fees and court costs. (Attachment 2)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES, Room 254E Statehouse, at 9:00 a.m. on January 31, 1994.

Rob Hodges appeared before the Committee as an opponent of **SB 440** explaining that it would result in costs of doing business which would ultimately be passed along to the customer. The Kansas Telecommunications Association is unsure as to what problem would be solved by the bill. He stated that inasmuch as **SB 440** pertains to directory assistance services it would apparently make an independent local exchange company liable for damages for a service it does not perform. He also raised the question that if a customer presented a listing and the telephone company accepted it, how would the customer be damaged and why would the telephone company be liable? (Attachment 3)

Lincoln Brown also spoke in opposition of the bill which would create unlimited strict liability for errors in directories published by telephone companies and directory assistance listings. He explained that the SWBT tariff is a fair means for resolving disputes between the company and its customers as it provides both customers and company with an expectation of the damages the customer may be able to recover for directory errors. He felt it was not fair to single out the telephone companies for statutory liability of this type when there are numerous other directory publishers. (Attachment 4)

Attorney Mike Smith stood for questions. He pointed out that Southwestern Bell Telephone was self insured and did not have an insurance company to carry suits such as this.

A motion was made by Senator Burke to approve the minutes of the January 27 meeting. A second was made by Senator Jones. Motion carried.

There being no more time, the Chairman adjourned the meeting.

The next meeting is scheduled for February 1, 1994.

GUEST LIST

SENATE TRANSPORTATION COMMITTEE

DATE: JANUARY 31, 1994

[illegible]



Kansas Association for the Blind and Visually Impaired, Inc.

AN AFFILIATE
OF THE
AMERICAN COUNCIL
OF THE BLIND

IN OPPOSITION TO H 2445

testimony by Michael Byington
Registered Kansas Lobbyist for the above named organization
and Consultant for the Kansas Deaf-Blind Program

Many blind and visually impaired individuals oppose the allowance of any traffic turns on a red traffic signal. The Kansas Association for the Blind and Visually Impaired Inc. is on record as opposing the already legalized right turn on red provisions and opposing any other aspects of increasing the legal rights of drivers to make turns against red traffic lights. I serve this organization as a volunteer lobbyist, but I also speak to this issue from the standpoint of someone who is employed to teach independent living skills, including orientation and mobility, to individuals who are multiply disabled blind.

When an individual's vision is too poor to see the color of traffic signals or the movement of traffic, he or she is trained to cross busy streets by listening to the flow of traffic. An individual with normal directional hearing can listen to the movement of traffic, and from this information usually determine what the signal is doing and when it is safe to cross.

When the Kansas Legislature adopted right turn on red about 21 years ago, many blind individuals who also had slight directional hearing impairments found that they could no longer accurately hear traffic sufficiently to cross streets independently. At the time right turn on red was adopted in this State, however, we were in an energy crisis, and there was significant evidence that this measure would save considerable fuel by cutting down auto idle time. The travel needs of blind people were considered secondary to the energy savings by the Legislature.

House Bill 2445 does not cover so many intersections that fuel savings are a significant issue. Yet in a number of Kansas cities, downtown areas featuring considerable numbers of one way streets continue to be business and public transportation hubs frequented by blind citizens who may work in the area or transfer buses there. Because there are less directions to keep track of, blind persons, even with hearing impairments, currently often find one way streets the easiest to cross and are more willing to attempt these crossings independently. Allowing left turn on red would negate this travel advantage.

The blind and visually impaired of Kansas, as in most other States

as well, have adjusted to right turn on red because we have had to. Some of our number have become less safe, less efficient, and/or more dependent in our traveling because of the law, but we lost the fight so we had to cope. It is nonetheless still a fair question to ask just how much you sighted, driving types expect us to give up just so you can get from point "A" to point "B" a little faster while we are missing the bus to which we are attempting to transfer because we can not get across the street.

Yes, I know that the proposed law, as well as the existing statute, states that drivers must yield the right of way to pedestrians lawfully within an adjacent crosswalk. Realistically, however, this requirement usually defies the laws of physics. At the vast majority of intersections, a driver must pull into the crosswalk in order to see around the corner and determine if other traffic is coming. If the way is not clear, then the driver sits in the intersection blocking the crosswalk and waiting a safe time to proceed. As a pedestrian and as an instructor for blind and deaf-blind, I have experienced many situations where the only way a traveler could have remained in a crosswalk would be to open the back doors of a four door car and crawl through the back seat. This was not usually a problem prior to the passage of right turn on red. In areas where there are one way streets, the problem is usually exacerbated by the fact that these are high density areas where buildings are often tall and sidewalks narrow and crowded thereby requiring the driver to pull out even further to see what is coming.

For these reasons, we are requesting that the bill be killed. If it is not the pleasure of the Legislature to do so, then we would request that it instead be amended by striking line eight, page two starting with the word "except" through the end of (3) at line 27, page two. This would not only take care of our current concerns concerning left turns on red on one way streets, but would get rid of that pesky right turn on red provision as well.

Let me close by apologizing for not catching this one while it was in either the House or Senate Committee. I lobby only on a volunteer basis and am employed full time on a job which requires me to work State-wide. This bill moved so fast we simply did not catch up with it until now. Thank you.

December 15, 1993

Appearance by Dale F. Kuhn before Shawnee Legislative Delegation re: Kansas Corporation Commission and Southwestern Bell Telephone Company.

My name is Dale Kuhn. My address is 15416 Johnson Drive, Shawnee Mission, Kansas. I am president of Nutri-Shield, Inc. which manufactures and sells a chemical that prevents moisture penetration in hay and silage. The major focus of our market covers 10 of the highest hay producing states in the country, selling to both private individuals and distributors throughout that market, as well as a lesser number of sales to other areas of the country.

Our business was started in 1988 and our sales doubled every year until 1991. This success was partly due to the fact that we maintained an effective public relations and advertising program.

On March 2, 1993, we discovered that Southwestern Bell had mistakenly changed our business telephone from a listed number to an unlisted number on November 6, 1990. This, of course, had a devastating effect on our business.

As an example, in 1991 there was an article in *Soybean Digest* magazine, which has a circulation of 240,000. The article was a third-party endorsement of our product, so our phone number did not accompany the article. Normally, an article of this kind prompts inquiries from prospective customers to our company. We have the capability of tracking all inquiries and were surprised that we received none as a result of this article.

When we finally discovered the phone number listing error, we notified Southwestern Bell, through our attorney, of our potential loss. Their response to us was as follows:

1. Admitted their mistake; however, with the wrong date the mistake occurred.
2. Offered to pay Nutri-Shield, Inc. \$1,800.00.
3. Asked Nutri-Shield, Inc. to sign a release.
4. Informed Nutri-Shield, Inc. that Southwestern Bell is protected by the state tariffs.

With their letter in hand, we took action on two fronts to determine if, in fact, SWB was not to be held responsible for their mistakes:

1. A claim was filed with the Kansas Corporation Commission. This claim was denied on the basis that the KCC did not have jurisdiction over financial claims. A request was then made for a hearing before the Commission and this was also denied. Later, in August of 1993, I made a phone call to the Executive Secretary of the Commission. I am still waiting for a return call.

During this period of trying to obtain some assistance from the KCC, I was told that the solution was in the courts.

2. In an effort to determine if SWB was truly protected by the tariffs and not responsible for their mistakes, I contacted five law firms to obtain an independent opinion. Two of them I am sure you recognize: Watson Ess and Blackwell Sanders, both leading firms in Kansas City, Missouri. All five of the law firms contacted indicated that there was not a chance of winning a case; that, in order to do so, we would be required to prove wanton and willful intent on the part of SWB. This, of course, is impossible and I realized that SWB was right; they are truly protected by the tariffs and the KCC.

Realizing the effect this incident had both on my business and for me, personally, I sought ways to change the system so that an occurrence of this kind would not happen again. I made phone calls to Senators Dick Bond and Gus Bogina to ask for their assistance. Senator Bogina offered to introduce the bill you have before you. This bill changes the tariffs, making SWB responsible for their mistakes and giving the consumer a chance in the courts. However, I would suggest that this bill be amended to make the KCC responsible for settling claims of this nature. The reason for this is that SWB has the power to delay any action on such a suit for years, costing the consumer many dollars in legal fees and court costs.

I am sure that there are a couple of questions that you would like answered.

Question: Weren't you negligent in not checking the information service?

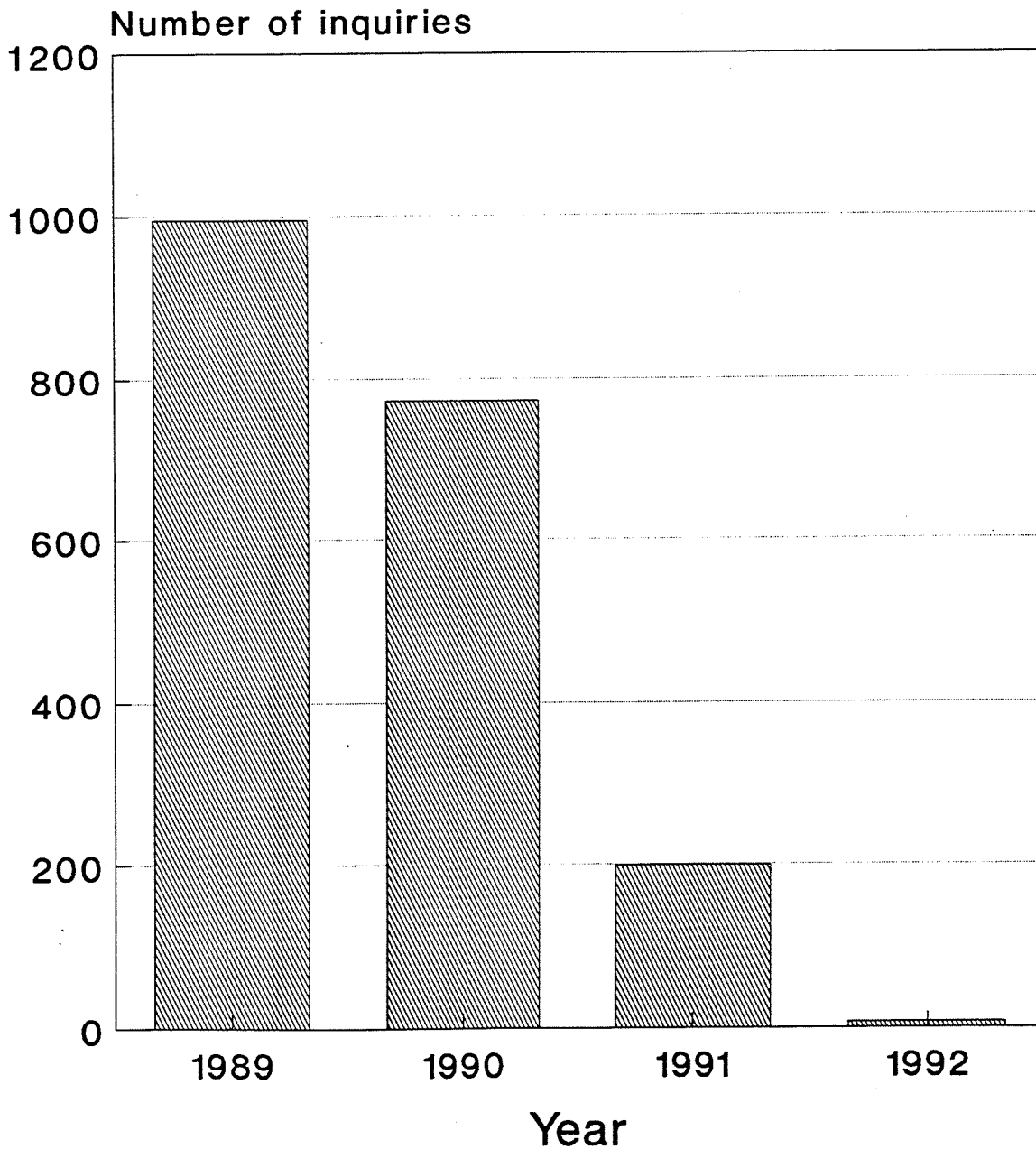
Answer: How many of you check the information operator to see that your number is carried properly?

Question: What will you and your company benefit from this legislation?

Answer: Nothing. We are foregoing the offer made by SWB of \$1,800.00, in lieu of signing their release.

In closing, I urge you to support Senator Bogina's Bill number _____. Give the consumer at least a chance to make SWB and the KCC deal fairly and responsibly with their customers.

NUTRI-SHIELD, INC. PRODUCT INQUIRIES



1988 included with 1989



Legislative Testimony

Kansas Telecommunications Association, 700 S.W. Jackson St., Suite 704, Topeka, KS 66603-3731

Testimony before the Senate Committee on Transportation & Utilities

SB 440

January 31, 1994

Mr. Chairman, members of the committee, I am Rob Hodges, President of the Kansas Telecommunications Association. Our membership is made up of telephone companies, long distance companies, and firms and individuals who provide service to and support for the telecommunications industry in Kansas.

I appear today as an opponent of SB 440. It appears to the KTA members to whom I have spoken that the bill would result in increased litigation and increased costs of doing business -- costs what would ultimately be passed along to the customer.

As SB 440 pertains to errors and omissions in the directory, several KTA members were unsure of what problem will be solved by the bill. In my visits with members, I learned that many telecommunications companies are already insured for errors and omissions in their directories. I spoke with a company that insures some 400 telecommunications companies nationwide and learned that each year they pay one or two claims for loss attributable to telephone directory error. The problems of directory error or omission seem to be small in number and already effectively handled by current practice.

As SB 440 pertains to directory assistance services, the bill would create some real problems. Independent local exchange companies (LECs) do not perform directory assistance services themselves. Directory assistance is performed under tariff by Southwestern Bell. The bill apparently would make an independent LEC liable for damages for a service it does not perform.

The language in lines 19 and 20 on page 1 is particularly disturbing. Under SB 440, a LEC would be liable for damages resulting from errors or omissions in accepting listings as presented by customers or prospective customers. First, how can a company be liable for damages from an error in a listing presented by a prospective customer? It seems to us that the alleged damaged party should at least be a telephone customer. Second, if the customer presents the listing and the telephone company accepts it, how is the customer damaged and why is the telephone company liable?

KTA members do not trivialize the importance of having correct information in their directories. In fact, they work hard to assure the information is correct. It appears that SB 440 would foster litigation and increase the likelihood that every customer's bill would reflect the cost of a LEC's defense.

Thank you, Mr. Chairman, for the opportunity to appear and tell you of our opposition to SB 440.

TESTIMONY OF LINCOLN E. BROWN

My name is Lincoln E. Brown, and I am Area Manager - Rates for Southwestern Bell Telephone Company. I am here today on behalf of the Company to oppose the passage of S.B. 440. This bill, in effect, creates unlimited strict liability for errors in directories published by telephone companies, and for errors in directory assistance listings.

As you may be aware, SWBT has a tariff provision in place regarding the amount of damages recoverable from the telephone company for directory errors. Tariff provisions have been held by the courts to have the force of law. In this instance, SWBT's tariff is a necessary, effective, and fair means for resolving disputes between SWBT and its customers. It provides both our customers and the company with an expectation of the damages the customer may be able to recover for directory errors. It further recognizes the fact that SWBT services approximately one million customers in Kansas, and while SWBT's goal is to have complete freedom from error in its directory listings, totally error-free listings are practically impossible.

This legislation targets specifically those telecommunications public utilities that publish their own directories and/or provide directory assistance services. This bill, if passed, would unfairly hold Southwestern Bell Telephone to a nearly impossible standard -- that of strict liability for all damages resulting from any errors in its directories or directory assistance listings, regardless of the cause. The bill as written would make SWBT liable even for those errors that were caused by the erroneous submission of listings by the listed party. In other words, even if SWBT correctly input the information it was given.

The bill is also patently unfair in that it creates statutory liability for only those directories published by the telephone companies. As you may know, the directory publishing business is highly competitive. It is not fair to single out the telephone companies for statutory liability of this type when there are numerous other directory publishers (such as Polk's and the publishers of the regional non-telco phone directories) who are not included in the application of this bill.

SWBT would also feel an impact on its cost to do business in the state of Kansas. Statutory repeal of SWBT's tariff limitation of damages would certainly lead to increased litigation over directory and/or directory assistance errors. The expenses of this increased litigation, including the payment of any judgments rendered against SWBT, would be borne by SWBT's customers and stockholders.

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This bill is also of limited benefit under current Kansas common law. The tariff limits the telephone company's damages when under the circumstances of each individual case it is reasonable to do so. See Holman v. Southwestern Bell Telephone Company, 358 F. Supp. 727 (D. Kan. 1973). It protects the telephone company from errors in the directory resulting from honest mistake and ordinary negligence. Where the telephone company's actions amount to willful or wanton conduct, the courts have held that the tariff limitation does not apply. Id. In other words, where the telephone company's conduct is more egregious, the customer can recover damages in excess of those provided by the tariff. As such, willful and wanton conduct on the part of the telephone company is deterred.

In conclusion, SWBT strives for complete freedom from error in its directory listings. In today's increasingly competitive environment, customer satisfaction is essential for success in the marketplace. When errors occur, however, the telephone company makes all necessary corrections immediately upon being notified of the error.

Thank you for the opportunity to present this testimony today.